

Service Date: January 14, 1997

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of)	UTILITY DIVISION
U S WEST Communications, Inc. to)	DOCKET NO. D96.4.70
Restructure its Carrier Common Line)	
Charges for Intrastate access.)	ORDER NO. 5925b

**ORDER ON JOINT MOTION FOR RECONSIDERATION AND
JOINT MOTION FOR STAY OF AT&T COMMUNICATIONS OF THE
MOUNTAIN STATES, INC. AND MCI TELECOMMUNICATIONS CORP.**

On December 19, 1996 AT&T Communications of the Mountain States, Inc. (AT&T) and MCI Telecommunications Corporation (MCI) filed a Joint Motion asking the Montana Public Service Commission (Commission) for reconsideration of Order No. 5925a issued by the Commission on December 9, 1996. The Joint Motion requests that the Commission reconsider its findings and conclusions in its Final Order in Docket No. D96.4.70 and issue an order on reconsideration denying U S WEST Communications, Inc.'s (U S WEST) proposed restructuring of its carrier common line (CCL) charges. Concurrently, AT&T and MCI filed a Joint Motion for a stay of Order No. 5925a pending review of the Motion for Reconsideration.

AT&T and MCI support both motions by arguing that Order No. 5925a is unlawful, unjust and unreasonable for two reasons: (1) it establishes a mechanism that will automatically recalculate U S WEST's CCL revenue requirement and effect a change to U S WEST's CCL charges without the opportunity for a hearing to determine the charges are just and reasonable,¹ and (2) it approves charges based exclusively upon current CCL revenues, without regard to whether the current revenues exceed U S WEST's costs based upon currently approved allocated

¹ The movants claim that this violates §§ 69-3-301, -302, and -303, MCA

cost of service studies, and thus there is no record basis to determine whether the rates are just, reasonable and nondiscriminatory.²

In further support of the Joint Motion for Stay, AT&T and MCI assert that they will suffer irreparable harm if Order 5925a takes effect because they may incur payment liability for access services prior to such time as the Commission renders its order on reconsideration in this matter.

They also state that they may be forced to file revised interexchange schedules changing their existing rate structure which they do not want to do pending review of their motion for reconsideration.

Commission Decision on Joint Motions

1. The Commission may grant a stay of an order upon terms which it considers proper. Section 2-4-702(3), MCA. The irreparable harm cited by the movants is that, pending review of the Motion for Reconsideration, they may incur liability for access services and they may be forced to file revised schedules changing their existing rate structures. They further allege that other interexchange carriers may also find it necessary to make similar changes to their rates.

2. The Commission finds these allegations of irreparable harm without merit. The parties' "bulk bills" for CCL charges owed to U S WEST will not change significantly with the restructuring approved in Order No. 5925a. Although they will be assessed CCL charges as calculated by the flat-rated method rather than on the basis of minutes of use, the restructuring will not significantly change U S WEST's total CCL revenue and will create no more fluctuation in charges than under the previous method. Minutes of use will still be used to determine market share.

3. AT&T and MCI have provided no substantive basis for granting a stay. The Commission concludes that general speculative allegations of irreparable harm, which are not

² The movants claim that this violates § 69-3-807, MCA.

factually supported and have no basis in the record, do not constitute proper grounds for staying the effect of Order No. 5925a. The Commission acted expeditiously on the motions, holding a work session on January 6, 1997, the first opportunity for Commission action following proper notice of the filing and within 20 days of the filing. Thus, AT&T and MCI's claims of harm during the pendency of the reconsideration do not apply.

4. AT&T and MCI contend that the Commission should grant their motion for reconsideration because Order No. 5925a is unlawful, unjust and unreasonable. Their first argument claims that the Order allows an automatic recalculation of CCL revenue requirements without the opportunity for a hearing. The parties presented arguments on this point during the course of this proceeding. The Commission rejected the arguments, finding that the new method for calculating CCL charges for billing is more in keeping with the fixed nature of the costs recovered. In addition, the Commission requires that USWC provide data for verification of the charges billed to the interexchange carriers and to the Commission. The Commission's decision permitting USWC to restructure CCL charges also includes several conditions that will trigger a review of the approved "factor."

5. The record in this Docket clearly demonstrates that the restructured method for determining CCL charges does not result in an automatic recalculation of CCL revenue requirements. While it is true that variables will affect the CCL charges assessed, this is not a change because the prior calculations were dependent upon variables for minutes of use. The new method still uses minutes of use, but uses such in calculating the market share rather than billing a charge for each minute used.

6. The second argument is that the Order approves of charges without regard to whether current revenues exceed U S WEST's costs. The cost basis of the flat-rated CCL is no less an issue than the cost basis of the usage sensitive rates that the flat rates replaced. The Commission addressed this concern in the Order, emphasizing that this cost issue did not emerge with this CCL restructuring docket. The Commission stated in Order No. 5925a that it would address this cost issue in any future rate rebalancing filing made by U S WEST. U S WEST filed a rate restructure filing on December 27, 1996 (Docket No. D96.12.220).

7. AT&T has provided no basis for modifying or changing the initial decision in this matter. The Commission denies the movants Motion for Reconsideration.

Conclusions of Law

1. The movants, AT&T and MCI, are corporations which provide regulated interexchange services in Montana and, as such, are public utilities within the meaning of §§ 69-3-101, and -803(3), MCA. The applicant, U S WEST, is also a public utility regulated by the Commission within the meaning of §§ 69-3-101, and -803(3), MCA.

2. The Commission properly exercises its jurisdiction in this Docket pursuant to §§ 69-3-102, and -302, MCA.

3. The Commission is charged with the responsibility of maintaining just, reasonable and nondiscriminatory rates in Montana. Section 69-3-807(1), MCA. Without a full cost-of-service study to review CCL charges and other rates, it is not appropriate to address whether the CCL charges remain just and reasonable when the rates essentially remain the same, but it is appropriate to review CCL rates for discriminatory impact in certain circumstances, including expansion of EAS, resale of local service, and future sales of exchanges.

4. The Commission may grant a stay of its order upon terms which it considers proper. Section 2-4-702(3), MCA. AT&T and MCI's speculative allegations, unsupported by the record, do not constitute irreparable harm that they claim will result from a denial of a stay.

5. A motion for reconsideration must set forth the specific grounds upon which the movant considers an order of the Commission to be unlawful, unjust or unreasonable. ARM 38.2.4806(1). On reconsideration, the Commission may modify, change or abrogate the original order or decision if it is in any respect unwarranted or unjust, or should be changed. ARM 38.2.4806(3). The Commission concludes that the Motion for Reconsideration does not present a sufficient basis upon which to change the decision in the Final Order in this Docket. Order No. 5925a is not unjust or unwarranted and should not be changed.

Order

THEREFORE, based upon the foregoing, it is ORDERED that AT&T and MCI's Joint Motion for Stay and Joint Motion for Reconsideration are denied.

DONE AND DATED this 6th day of January, 1997.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

NOTE: You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.